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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/074,752	02/13/2002	Kieth G. Spitler	Mo6806/MD-99-39B-PU	9963
157	7590	03/25/2004	EXAMINER	
BAYER POLYMERS LLC 100 BAYER ROAD PITTSBURGH, PA 15205			COONEY, JOHN M	
			ART UNIT	PAPER NUMBER
			1711	
DATE MAILED: 03/25/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	10/074,752		SPITLER ET AL.	
	Examiner		Art Unit	
	John m Cooney		1711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>0202</u> . | 6) <input type="checkbox"/> Other: ____ |

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cioca et al. in view of Markusch et al.('051).

Cioca et al. discloses preparations of polyurea composites prepared from isocyanates having NCO group contents and functionalities as claimed, water, and additive materials under heated molding/shaping conditions which read on the work-up conditions claimed (see column 2 line 11 – column 4 line 32, the examples, as well as, the entire document). Though the specifics of viscosities of isocyanates are not referred to by Cioca et al., such is not seen to be an element of distinction because owing to the overall similarities between the described features disclosed this additional element is seen to be inherent to Cioca et al.'s disclosure.

Cioca et al. does differ from the claims in that it does not specifically recite hollow spheres as a potential additive. However, Markusch et al.('051)(see column 9 lines 19-60, as well as, the entire document) discloses the interchangeable usage of inorganic beads and wood chips/dust in the making of closely related isocyanate-based article formations. Accordingly, it would have been obvious for one having ordinary skill in the art to have interchangeably employed the inorganic beads of Markusch et al. in place of the wood flakes/dust of Cioca et al. as motivated by the reasonable expectation that they will behave comparably in order to arrive at the products and processes of

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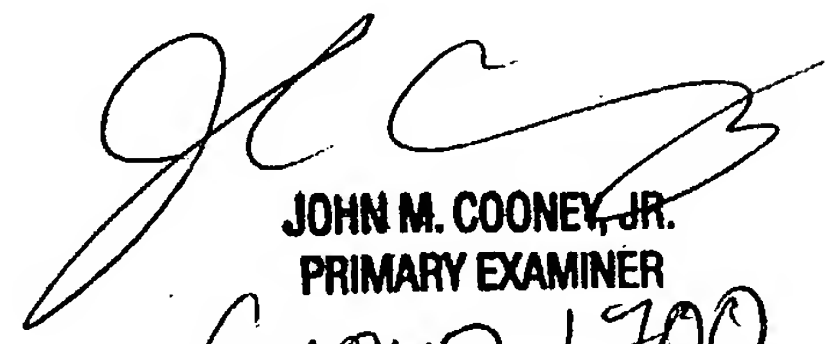
applicants' claims with the expectation of success in the absence of a showing of new or unexpected results. It is prima facie obvious to substitute equivalents, motivated by the reasonable expectation that the respective species will behave in a comparable manner or give comparable results in comparable circumstances. *In re Ruff* 118 USPQ 343; *In re Jeze* 158 USPQ 99; the express suggestion to substitute one equivalent for another need not be present to render the substitution obvious. *In re Font*, 213 USPQ 532.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kossatz et al. and Rosthauser are cited for their disclosures of relevant NCO group contents in related preparations. Markusch et al.('720) is cited for its discussion of the isocyanate water reaction in polyurea synthesis. Schwab et al. discusses water as an extender in isocyanate based syntheses.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Cooney whose telephone number is 571-272-1070. The examiner can normally be reached on M-F from 9 to 6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck, can be reached on 571-272-1078. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


JOHN M. COONEY, JR.
PRIMARY EXAMINER
Group 1700